

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

JESSE WAYNE REID, JR.,

Plaintiff,

6:15-cv-1556-TC

v.

FINDINGS AND
RECOMMENDATION

RAY MABUS, et al.,

Defendants,

COFFIN, Magistrate, Judge.

Plaintiff's Application to proceed *in forma pauperis* (#2) is allowed. However, for the reasons set forth below, plaintiff's complaint should be dismissed, without service of process, on the basis that it is frivolous. See 28 U.S.C. § 1915(d).

BACKGROUND

Plaintiff, a resident of Pittsburgh, Pennsylvania, filed a complaint *pro se* alleging claims against various military officers

and federal agency officials.

STANDARDS

A complaint filed *in forma pauperis* may be dismissed before service of process if it is deemed frivolous under 28 U.S.C. § 1915(d). Neitzke v. Williams, 490 U.S. 319, 324 (1989); Jackson v. State of Ariz., 885 F.2d 639, 640 (9th Cir. 1989). A complaint is frivolous "where it lacks an arguable basis in law or in fact." Nietzke, 490 U.S. at 325; Lopez v. Dept. of Health Services, 939 F.2d 881, 882 (9th Cir. 1991); Jackson, 885 F.2d at 640. The term "'frivolous' . . . embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." Neitzke, 490 U.S. at 325 (footnote omitted); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991); Jackson, 885 F.2d at 640.

Accordingly, in reviewing a complaint for frivolity, a trial court may "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Neitzke, 490 U.S. at 327. In so doing, the assessment of the factual allegations must be weighted in favor of the plaintiff. Denton v. Hernandez, 112 S.Ct. 1728, 1733 (1992).

"Baseless" claims subject to sua sponte dismissal include those "describing fantastic or delusional scenarios." Neitzke, 490 U.S. at 328; Denton, 112 S.Ct. at 1733; McKeever, 932 F.2d at 798. "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the

wholly incredible." Denton, 112 S.Ct. at 1733.

DISCUSSION

In the first place, none of plaintiff's factual allegations appear to have any relation to the State of Oregon. Therefore, there is an issue of this court's personal jurisdiction over defendants

However, even if plaintiff could establish some jurisdictional basis for his claims, his court finds that the factual allegations in the instant case are irrational and wholly incredible. Regardless of how liberally the complaint is construed, the allegations of "voice to skull" and a massive conspiracy targeting 300,000 individuals with "electronic harassment" are not credible and fail to state a claim.

CONCLUSION


Based on the foregoing, plaintiff's complaint should be DISMISSED. Because it is apparent that the deficiencies of the complaint cannot be cured by amendment, the dismissal should be with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this

recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

IT IS SO ORDERED.

DATED this 16 day of November, 2015.



Thomas M. Coffin
United States Magistrate Judge